

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544

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In the Matter of  
IP-Enabled Services  
----- X

WC Docket No. 04-36

**COMMENTS  
OF  
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## Introduction

On March 10, 2004, the Federal Communications Commission (“FCC” or “Commission”) issued a Notice of Proposed Rulemaking (“IP NPRM”) to “examine issues relating to services and applications making use of Internet Protocol (IP), including, but not limited to voice over IP-enabled (VoIP) services.”<sup>1</sup> The IP NPRM arose in part from the Commission’s consideration of public comments filed in response to multiple Petitions for Declaratory Rulings,<sup>2</sup> and was accompanied by issuance of a Declaratory Ruling on Pulver.com’s Free World Dialup service.<sup>3</sup>

IP is a transmission protocol that digitizes packet information, including voice, data and video, and transmits the information over various network routes that may or may not involve the Internet and reassembles it at the destination point. Relying on IP as a transmission mode enables VoIP to gain greater efficiencies than the traditional public switched telephone network (“PSTN”) because VoIP packets can use the entire capacity of a transmission system and do not require end-to-end dedicated circuits.

In recent years, a number of providers have introduced VoIP services which vary in the

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<sup>1</sup> WC Docket No. 04-36, *In the Matter of IP-Enabled Services*, FCC 04-28, *Notice of Proposed Rulemaking*, adopted February 12, 2004 and released March 10, 2004 at ¶ 1.

<sup>2</sup> See *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45 (“FWD”); *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (filed October 18, 2002); *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Corporation*, WC Docket No. 03-211; *Petition of U.S. West, Inc. for Declaratory Ruling Affirming Carrier’s Carrier Charges on IP Telephony*; *Level 3 Petition for Forebearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (filed Dec. 23, 2003); *Petition of SBC Communications, Inc. for Forbearance Under Section 10 of the Communications Act from Application of Title II Common Carrier Regulations to “IP Platform Services,”* WC Docket No. 04-29.

<sup>3</sup> WC Docket No. 03-45, *supra*, Memorandum Opinion and Order, FCC 04-27, released Feb. 19, 2004.

manner that they use IP technology. For example, Free World Dialup's service travels entirely over the Internet, requiring users to have computers with broadband access at both ends. Vonage, another VoIP provider, uses computers with broadband access at one end of a call but can terminate the call on a PSTN subscriber's telephone after being converted from IP to conventional format by a gateway service provided by a competitive local exchange carrier ("CLEC"). Still another variation of VoIP service is employed by some cable operators, such as Time Warner or Cablevision, which use IP format to initiate calls on their coaxial cable network and then hand the call to a CLEC, in some cases, an affiliated CLEC, for completion over the PSTN. Interexchange carriers ("IXCs"), such as AT&T or MCI, increasingly employ VoIP to reduce the cost of long-distance transmission services that commence and end on the PSTN. These examples do not encompass every version of VoIP currently offered, and new approaches are continuously being introduced.

Because some VoIP services are beginning to substitute for traditional PSTN telephone services,<sup>4</sup> a host of regulatory policies that apply to common carriers are implicated by the move to VoIP services. The New York Office of the Attorney General ("NYOAG") asserts that the Commission should determine that VoIP services: (a) be required to assist law enforcement in effecting court-authorized wiretaps; (b) enable subscribers to access emergency 911 and E911

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<sup>4</sup> See e.g., *Communications Daily*, May 24, 2004, *Cable MSOs Pick Up VoIP Pace, Shrug Off Vonage* (Cablevision has 71,000 IP telephone subscribers in the New York City area; Time Warner has 20,000-25,000 and added 16 new markets; Charter has 3,000 IP telephony subscribers and plans to offer its service to 500,000 residential consumers by year end; AT&T's VoIP "CallVantage" service is offered in NY, MA, NJ, TX and throughout the West; Vonage is the market leader with 150,000 subscribers). See also *Barrons*, May 24, 2004, *Talk Gets Cheap*, at 19-22 (22 million households now have broadband access, making broadband-based VoIP services like Vonage a threat to wireline carriers; Net2Phone has 100,000 U.S. customers; prepaid calling cards using VoIP were used by an estimated 1.2 million people in 2003 and are expected to reach 1.3 million in 2004; Cox is beginning to offer IP telephony to its million circuit-switched customers; Comcast, with 1.2 million circuit-switched subscribers is preparing to launch an IP telephony service).

services; (c) be available to people with disabilities, (d) contribute to federal and state universal service programs; (e) preserve consumers' existing privacy rights; and (f) be subject to federal and state consumer protection laws and regulatory enforcement.

### **Interest of the New York State Attorney General**

The NYOAG is charged with enforcing federal and state consumer protection laws, including prohibitions of antitrust and deceptive business practices. The NYOAG frequently advocates in federal and state regulatory proceedings on behalf of New York State, consumer and small business interests and the public interest generally.

### **Comments**

#### **1. VoIP Services Must Permit Law Enforcement to Effect Court-Authorized Wiretaps**

The last few years have witnessed an unprecedented increase in the release of new products employing VoIP technology. A tremendous amount of business traffic is being carried on the internet and the number of residential users who are choosing to replace their phone service with VoIP telephony continues to grow each month.<sup>5</sup> Undoubtably among those increasingly using VoIP telephony will be criminals and terrorists.<sup>6</sup>

Conversations using VoIP technologies, unlike those placed over analog phones, are completely inaccessible to law enforcement. The potential use of VoIP by criminals will cripple law enforcement's ability to identify, prevent, apprehend and convict those engaging in

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<sup>5</sup> See Cythia L. Webb "Cisco and IBM Make 'Net Ring Tones" *The Washington Post*, May 18 2004. ("Vonage said it . . . is signing more [customers] at a rate of 20,000 per month."); See Laurie J. Flynn, "I.B.M. and Cisco Planning Joint Internet Phone Venture," *The New York Times*, May 18, 2004.

<sup>6</sup> Experience shows that criminals, particularly sophisticated ones, quickly find and exploit these holes, especially when, in the case of VoIP telephony there is little change in the means of communication. See Affidavit of J. Christopher Prather, Deputy Attorney General, Statewide Organized Crime Task Force, sworn to April 12, 2004 at ¶ 14 ("Prather Aff."), attached as Exhibit A to the NY OAG Comments to proceeding, RM-10865.

dangerous criminal activity.<sup>7</sup> In addition, other internet enhanced services relying on IP technology such as picture messaging and push-to-talk services, are similarly inaccessible to law enforcement. Public safety, thereby, is becoming increasingly jeopardized by these impediments to law enforcement's ability to carry out authorized intercepts. Today, in the aftermath of the 9/11 terrorist attacks, the risks are more acute than ever. As the nation engages in a global war against terror, federal, state and local public safety agencies are working to detect, identify, prevent and capture those who threaten America's safety. Interception of wire and electronic communications is an essential tool in this effort, and cannot be lost to law enforcement due to these technological advances.<sup>8</sup>

The Commission, as part of its separate proceeding seeking comments on the Justice Department/FBI and DEA Joint Petition for Expedited Rulemaking, RM-10865, has chosen to address the issue of the applicability of the Communications Assistance for Law Enforcement Act ("CALEA") to VoIP. It is essential that the Commission, in reaching its conclusions concerning internet enhanced service, remain aware of the problems faced by law enforcement regarding access to VoIP technologies and not impede a future ruling that VoIP technologies be required to permit law enforcement to effect court authorized wire taps.

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<sup>7</sup> For a more thorough account of how law enforcement is being hampered by VoIP technology, the Commission is directed to both the Comments and Reply Comments of New York State Attorney General Elliot Spitzer in CALEA preceding RM-10865.

<sup>8</sup> Experience shows that criminals, particularly sophisticated ones, quickly find and exploit these holes. See Affidavit of J. Christopher Prather, Deputy Attorney General, Statewide Organized Crime Task Force, sworn to April 12, 2004 at ¶ 14, attached as Exhibit A to the April 12, 2004 NY OAG Comments to CALEA proceeding, RM-10865.

## **2. VoIP Services Must Facilitate Emergency 911 Public Safety Response and Support Response by Local Emergency Services**

In the near future, VoIP technology could replace large segments of analog and wireless phone service. The Commission must therefore decide whether to apply 911 and E911 requirements to VoIP. Should the Commission determine that VoIP Providers are not required to provide 911 and E911 service, it is likely that large segments of the population will, in some cases unknowingly, be left without an easy means to access emergency aid. In order to prevent this result, VoIP providers' products must allow their customers to access both traditional 911 and E911 systems.

Recognizing the importance of reliable E911 service for all phones -- wireline or wireless -- the Commission in 1996 mandated wireless E911. This service ensures that users of wireless phones had the same emergency access as those callers using wireline phones.<sup>9</sup> In the E911 Order, the FCC identified four criteria as relevant to determining whether particular entities should be subject to some form of 911/ E911 regulation.<sup>10</sup> It is apparent that, for most VoIP services, all of these criteria have been met.<sup>11</sup> Accordingly, under the FCC criteria VoIP providers should be subject to 911 and E911.

Public safety also dictates that 911 and E911 be available on all VoIP telephony.

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<sup>9</sup> See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676 (1996) (*E911 First Report and Order*).

<sup>10</sup> The test outlined by the Commission is whether: 1) the entity offers real-time, two-way switched voice service, interconnected with the public switched network; 2) customers using the service or device have a reasonable expectation of access to 911 and E911 services; 3) the service competes with traditional wireless or wireline service; and 4) it is feasible for the service or device to support E911. *Id.*

<sup>11</sup> The exception would be for entirely in-network VoIP Telephony represented by services such as pulver.com. These services never interact with the PSTN and, thus, would not meet the first criteria.

Individuals and companies choosing VoIP service have the same needs for access to emergency service as those using wireless and wireline phone service. If a phone does not have 911 and E911 as a standard feature, connection to a public safety answering point and subsequent emergency response by authorities will be unavailable.

Unfortunately, as demonstrated by current VoIP providers, in the absence of a dictate from the FCC, these phone services will not include 911 as a standard feature. Instead, the trend appears to be to only provide 911 if the customer affirmatively requests such service.<sup>12</sup> It is precisely because of the mandatory nature of 911 and E911 that the effective comprehensive emergency network exists. If the 911 service is not mandatory or if it entails cost to the subscriber, undoubtably many will chose not to participate. Should this be allowed to occur, the near complete coverage for emergency access that this Commission has expended such effort to achieve, will be lost.

Funding for the public safety answering points currently comes from costs imposed on both wireline and wireless phone subscribers. As the number of customers switching to VoIP telephony increases, the funding level of these vital facilities will be jeopardized if these customers are allowed to avoid contributing and the burden of these costs will shift disproportionately and unfairly to wireline and wireless consumers. The maintenance of a properly funded comprehensive emergency 911 and E911 system requires that VoIP telephony include these services and that the costs of 911 and E911 be shared by all consumers.

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<sup>12</sup> Although Vonage allows its customers to have 911 access, it only does so if the customer enables the service. See [http://www.vonage.com/features\\_911.php](http://www.vonage.com/features_911.php).



### 3. VoIP Services Must Be Accessible by People With Disabilities

There are over 54 million Americans with disabilities and the proportion of this “largest minority group” is expected to increase in the coming decades as the Baby Boom generation experiences age-related vision and hearing loss, life expectancy increases and the average age of residents advances accordingly.<sup>13</sup> As VoIP services become substantial substitutes for or possibly replace traditional PSTN services, the NYOAG urges the Commission to require that VoIP providers ensure that people with disabilities can access and use these new services and features. This requirement will provide equal access to new technologies for people with disabilities. As then-FCC Commissioner Michael Powell recalled, his temporary physical impairment from a vehicle accident provoked “the feelings of helplessness brought on by the inability to help myself with basic life functions,” and made him recognize that “people with disabilities can be hampered by lack of access to services others take for granted -- leaving a message for a colleague, reaching the desired person at a business, or simply receiving a phone call.”<sup>14</sup>

Whether the Commission determines a VoIP provider is classified as a “telecommunications carrier” or is providing a “telecommunications service,” the plain language of the 1996 Act<sup>15</sup> makes it unquestionable that the accessibility requirements are mandatory. As

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<sup>13</sup> WT Docket No. 96-198, *In the Matter of Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996 – Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry at ¶ 4, released September 29, 1999 (“Section 255 Report and Order”).

<sup>14</sup> Statement of FCC Commissioner Michael Powell issued with release of Section 255 Report and Order, *supra*.

<sup>15</sup> PL 104-104, 47 U.S.C. §§ 251, et seq.

the Commission acknowledged in 1999, “[u]nderstanding that communications is now an essential component of American life, Congress intended the 1996 Act to provide people with disabilities access to employment, independence, emergency services, education, and other opportunities.”<sup>16</sup>

Even if the Commission determines that VoIP service is not a “telecommunications service,” carriers employing VoIP technology should be made accessible to people with disabilities. Such a use of Title I authority has precedent, as the Commission previously extended accessibility obligations to two non-telecommunications services it classified as information services.<sup>17</sup> Providers of voice mail and interactive menus were made to comply with sections 251(a)(2) and 255 because each service was found to be “critical to making telecommunication accessible and usable by people with disabilities.”<sup>18</sup> Such application of ancillary jurisdiction over non-Title II matters has been upheld by the D.C. Circuit Court of Appeals as “well settled.”<sup>19</sup> If VoIP services are not accessible, people with disabilities would be deprived of the price and innovation benefits that competitive VoIP providers offer. The FCC must ensure that the substantial progress to date in making telecommunications services accessible to people with disabilities not be vitiated by exemption of VoIP service providers from the obligations of telecommunications service providers.

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<sup>16</sup> Section 255 Report and Order, *supra* at ¶ 4.

<sup>17</sup> Section 255 Report and Order, *supra* at ¶ 79.

<sup>18</sup> *Id.* at ¶ 94.

<sup>19</sup> *Computer and Communications Industry Association v. FCC*, 693 F.2d 198, 213 (D.C.Cir. 1982).

#### **4. VoIP Services Must Support Federal and State Universal Service Programs**

In the 1996 Act, Congress adopted a strong policy in support of universal service, ensuring that “quality services should be available at just, reasonable, and affordable rates . . . in all regions” and providing these services to “low-income consumers and those in rural, insular and high cost areas . . . at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>20</sup> In implementing the Act, the FCC has a successful history of efforts to promote universal service in conjunction with local exchange carriers and state regulators. To carry out Congress’ intent, the FCC, in consultation with the Federal-State Joint Board on Universal Service, maintains a Universal Service Fund (“USF”) which is supported by assessments on interexchange phone services. The New York State Public Service Commission has supplemented the federal universal service program with a Targeted Accessibility Fund which assists low-income consumers and people with disabilities.

The NYOAG recommends that the Commission require all VoIP service providers to contribute to the USF in a manner similar to that applicable to non-VoIP providers.<sup>21</sup> If VoIP services were exempt from USF contribution obligation, migration of more consumers and businesses from traditional telephony to exempt VoIP services would reduce the pool of USF contributors, and require increased assessments to maintain current levels of support for USF beneficiaries. This could potentially exacerbate the price differential between traditional and exempt VoIP services, spurring greater migration and creating a death spiral effect undermining

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<sup>20</sup> 47 U.S.C. §§ 254(b)(1)-(4) and (6).

<sup>21</sup> The NYOAG understands that the FCC is reviewing the most appropriate universal service contribution methodology in a separate proceeding, and consistent with the IP-Enabled Services NPRM, confine our comments here to USF applicability to VoIP services. See NPRM at ¶ 63.

the USF and the PSTN itself. Only if the Commission requires VoIP services to contribute their fair share can USF continue to perform its valuable service.<sup>22</sup>

## **5. VoIP Services Must Preserve Federal and State Privacy Protections**

Through optional payment for non-published telephone number service,<sup>23</sup> registration on state and recently federal do-not call telemarketing restriction lists,<sup>24</sup> and use of optional blocking of Caller-ID features, tens of millions of customers have demonstrated the high priority they assign to control of access to their telephone numbers.<sup>25</sup> While customers' reasons for restricting access to their telephone numbers varies, in the case of domestic violence victims, unintended disclosure of a home telephone number can have disastrous, even fatal, consequences. The Commission should require that any VoIP provider that offers telephone directory information on its subscribers, or furnishes its subscribers' telephone numbers (or the Internet equivalent) to other listing services, provide equivalent optional privacy protections.

In addition, Congress prohibits carriers from disclosing customer proprietary network

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<sup>22</sup> At some point in the future, if VoIP grows so much as to exceed traditional telephony in scope, the Commission may need to revisit the USF question. It is likely that part of that future review will also involve determination of whether VoIP services should be then included in the basket of services to become eligible for USF support itself pursuant to 47 U.S.C. § 254. That time, however, has not yet come.

<sup>23</sup> Approximately 20% of New York residential customers pay a monthly fee to keep their home telephone number from being published in local white page directories or released by directory assistance operators. The NYPSC prohibits publications of such customers' phone numbers in telephone directories. 16 NYCRR § 601.10(a)(1).

<sup>24</sup> New York established such a list in 1992 and other states passed similar laws before the federal telemarketing do-not call program was established. New York General Business Law § 399-p and New York Public Service Law § 92-d.

<sup>25</sup> In New York, consumers have the option to either block their telephone number automatically on all outgoing calls or to selectively block only those calls made after entry of a special code. Case 91-C-0428 - *Proceeding on Motion of the Commission to Investigate New York Telephone Company's Proposal to Institute Caller ID Service*, Opinion 92-5, *Opinion and Order Authorizing Caller ID Service*, issued April 9, 1992, at 29-30.

information (“CPNI”) without authorization from the customer.<sup>26</sup> The Commission should likewise require customer authorization before VoIP providers are permitted to disclose CPNI to third parties. There is no valid reason why subscribers of VoIP services should not be assured identical protection of their CPNI.

## **6. VoIP Services Must Comply With Federal and State Consumer Protections**

State regulatory agencies work to balance basic consumer protections with the needs of local and intrastate carriers, while tailoring the degree of regulation in order not to “needlessly impose costs that interfere with the rapid, widespread deployment of new technologies.”<sup>27</sup> In its recent decision, the New York State Public Service Commission (“NY PSC”) held that Vonage is a telephone corporation and reseller of telephone services under New York law and therefore subject to New York law governing telephone services.<sup>28</sup> Since VoIP services’ offerings to residential customers substitute for local and interstate telephone services that have long been regulated by the states as well as the FCC for the purposes of consumer protection, the FCC should require VoIP providers to comply with existing federal and state consumer protection rules and regulations.

For example, the NY PSC requires local carriers to offer consumers the ability to block pay-per-call services<sup>29</sup> without charge. Since customers are held liable for all calls made from

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<sup>26</sup> 47 U.S.C. § 222; *see also* 47 C.F.R. §§ 64.1600, *et seq.* And §§ 64.2001 *et seq.*

<sup>27</sup> Case 03-C-1285 - *Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation Concerning Provision of Local Exchange and Interexchange Telephone Service in New York State in Violation of the Public Service Law, Order Establishing Balanced Regulatory Framework For Vonage Holdings Corporation*, issued May 21, 2004 at 2.

<sup>28</sup> *Id.*

<sup>29</sup> Pay-per-call services use local exchanges 976, 540 or 970, as well as are code 900, to provide information services, including adult content and “psychic” advice, at a charge which is collected through the customer’s local telephone carrier bill. Residential customers and business customers with up to ten access lines may

their telephones, customers' ability to control the cost of their service through blocking should be applicable to customers subscribing to any VoIP service which facilitates pay-per-call information services.

Other NY PSC regulations protect residential customers from arbitrary service termination without adequate notice,<sup>30</sup> an opportunity to negotiate a deferred payment agreement for outstanding arrears<sup>31</sup> and the ability to dispute contested charges without loss of service so long as amounts not in dispute are paid.<sup>32</sup> The NY PSC regulations additionally provide protections for consumers in bill disputes with telephone providers.<sup>33</sup>

In addition, other protections currently provided to telephone service customers should be applied to VoIP services as well. For example, federal and state rules further require telephone carriers to assist customers contending with harassing or obscene callers.<sup>34</sup>

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elect blocking at no charge, and a per-line fee is permitted for business customers with over ten lines. *See e.g.* New York Public Service Law § 91-a (requires local carriers to permit customers who request blocking of calls to area code 900 numbers to assign a personal password "preventing the unauthorized removal of blocking"). *See also* 47 U.S.C. § 228 and 47 C.F.R. §§ 64.1501 *et seq.*

<sup>30</sup> "No telephone corporation shall suspend service until at least eight days nor terminate service until at least 20 days after a notice of termination has been served upon the residential customer or has been mailed to the residential customer at the premises where service is rendered . . ." 16 NYCRR § 633.4(c)(1). "A telephone corporation may not issue or send a notice of termination unless at least 25 days have elapsed from the date of the bill." 16 NYCRR § 633.4(c)(2).

<sup>31</sup> Residential customers who have received telephone service more than three months must be offered an opportunity to make monthly installments on their arrears plus maintain payments for ongoing service. 16 NYCRR § 633.8.

<sup>32</sup> *See* 16 NYCRR § 633.16 and 16 NYCRR § 12.3.

<sup>33</sup> The regulations permit "any utility customer to file a complaint with or ask a question of, the commission, relating to his or her . . . telephone . . . service, when the customer believes he or she has not obtained a satisfactory resolution of a dispute with a utility regulated by the commission." 16 NYCRR § 12.1(a); *see also* 16 NYCRR § 633.16.

<sup>34</sup> *See* 47 U.S.C. § 223 and NY PSC regulations 16 NYCRR § 602.7(g).

State Attorneys General and the Federal Trade Commission serve essential functions to enforce federal and state laws forbidding illegal and deceptive business practices or advertising.<sup>35</sup> Law enforcement activities by state Attorneys General have been important in supplementing the FCC's enforcement efforts,<sup>36</sup> and are explicitly permitted by the Commission's policy to detariff competitive wireless and long distance services.<sup>37</sup> Consistent with the FCC's policies pertaining to wireless and long distance carriers, VoIP providers must likewise be subject to state Attorneys General law enforcement actions.

Federal rules, such as the FCC's Truth In Billing rules further protect consumers. The Truth In Billing rules, for example are designed to make customers' phone bills understandable.<sup>38</sup> The same public policy reasons that convinced the Commission to adopt these requirements for telephone carriers apply to VoIP providers. Both industries are highly competitive, yet customers are likely to be deceived if bill statements do not clearly and accurately disclose each item in the list of charges. VoIP providers should be held to no less of a standard of clarity in their customer bills than applies to other carriers.

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<sup>35</sup> See e.g., New York General Business Law §§ 349-350 and New York Executive Law § 63(12).

<sup>36</sup> See e.g., *Assurance of Discontinuance by RCN (slamming and deceptive marketing practices)* [http://www.oag.state.ny.us/telecommunications/filings/rcn\\_slamming\\_assurance.html](http://www.oag.state.ny.us/telecommunications/filings/rcn_slamming_assurance.html); *Assurance of Discontinuance of Quest Communications (deceptive marketing)* <http://www.oag.state.ny.us/telecommunications/filings/qwest/index.html>; *Assurance of Discontinuance by MCI (billing misrepresentations)* [http://www.oag.state.ny.us/telecommunications/filings/MCI/discontinuance\\_index.html](http://www.oag.state.ny.us/telecommunications/filings/MCI/discontinuance_index.html); and *Assurance of Discontinuance by AT&T (false advertising)* <http://www.oag.state.ny.us/telecommunications/filings/att/index.html>.

<sup>37</sup> CC Docket 96-61 - *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 20730, released October 31, 1996. See also *Ting v. AT&T*, 319 F.3d 1126 (9<sup>th</sup> Cir. 2002), certiorari denied 124 S. Ct. 53.

<sup>38</sup> See 47 C.F.R. §§ 64.2400 *et seq.*

## Conclusion

As telecommunications services move from a traditional PSTN to those employing VoIP technology, the Commission must ensure that the system remains reliable, efficient and available to all Americans. As that move progresses, the Commission must further ensure that American consumers do not lose the critical protections that are provided by telecommunications services. These include effective 911 and E911 service, the ability of law enforcement to monitor conversations after obtaining Court authorized wiretaps, accessibility by people with disabilities, funding of universal service programs and consumer protections including protection of consumers' privacy. This proceeding presents the Commission with the opportunity to address these issues early in the development of VoIP telephony. In doing so, the Commission must ensure that these essential features of our telecommunications system remain in place for all users.

May 28, 2004

Respectfully submitted,

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